(31)

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P(S).No.4619 of 2007

Petitioner Nomeshwar Verma, s/o Shri B.R. Verma, aged 20 years, Occupation Service, Presently posted as Patwari in Patwari Halka No.88, Pandarbhatta, Sub-Tehsil, Dharsiwa, Tehsil: Raipur, r/o near Pragati Nagar Turn, Raipur (C.G).

-Versus-

Non-Applicants

1. State of Chhattisgarh, Through the Secretary, Department of Revenue, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh
2. Commissioner, Land Records, State of Chhattisgarh, Raipur (C.G)
3. Collector, Raipur, Distt. Raipur (C.G)
4. The Sub-Divisional Officer, Revenue, Raipur (C.G),
5. Bhuneshwar Verma, s/o Not known to the petitioner, occupation service, presently posted as Patwari, Patwari Halka No.98, Dharsiwa, Distt. Raipur (C.G)
6. Jitendra Kumar Sinha, s/o not known to the petitioner, working as Patwari, Patwari Halka No.40, Gohrapadar, Sub-Tehsil Mainpur (incorrectly mentioned in the order as Manpur) Tehsil: Gariaband, Raipur (C.G)

WRIT PETITION FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA

Appearance:

Shri Rajeev Shrivastava, counsel for the petitioner.

Shri Yashwant Singh, Govt. Advocate, for the State, on advance copy.

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ORAL ORDER
(08.08.2007)

Sunil Kumar Sinha, J,

Heard on admission.

By this writ petition, a challenge is made to the order of transfer dated 29.6.2007 whereby the petitioner who is working as Patwari in P.C.No.88 Pandarbhatta, Distt. Raipur has been transferred to P.C.No.40 Gohrapadar, Mainpur, Distt. Raipur on administrative ground.

Learned counsel for the petitioner argues that a perusal of the order would show that it has been passed by the Under Secretary by order and in the name of Governor. He submits that the competent authority in case of the petitioner is Collector, therefore, the order passed by the State Government through the Under Secretary is not in accordance with law. He also argues that Clause 7 of the M.P. (C.G) Land Record Manual deals with Transfer of Patwaris, which provides that a Patwari may be transferred from one circle to another in the same sub-division by the Sub-Divisional Officer and from one sub-division to another by the Collector. Proposals for transfer should be made through the Superintendent of Land Records by the Tahsildars. His submission is that the order passed in violation of this Clause is not in accordance with law. He further argues that the said order is also in violation of the transfer policy because the petitioner has not completed 3 years at the present place of posting and he has been transferred and the impugned order appears to have been passed to accommodate respondents no.5 & 6.

I have heard learned counsel for the petitioner as also Govt. Advocate and have considered the points in question.

So far as question of violation of policy is concerned, in the matter of ***Union of India –vs- S.L. Abbas, AIR 1993 SC 2444*** it has been held by the Apex Court that the guidelines issued by the Government about the transfer of Government employee do not

confer upon the Government employee a legally enforceable right. It has also been held vide para 7 of the aforesaid judgment that who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. However, it has been further held that while ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject.

Further in the matter of ***State of U.P. and others Vs. Gobardhan Lal, 2004 AIR SCW 2082***, it has been observed by the Apex Court that even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as along as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. The Apex Court has further observed that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

As far as provisions of Clause 7 of Land Records Manual is concerned, it no where says that any higher authority than the authority mentioned in the said clause shall be prohibited from passing an order of transfer. Even otherwise also, so far as administrative orders are concerned, if an order has been passed by the authority higher than the authority concerned, that cannot by itself be nonest in the eye of law.

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Present is not a case in which the challenge is made on the ground that the order has been passed by an authority inferior than the authority prescribed under the law. Therefore, on this ground, the impugned order cannot be challenged. It is not an instance in which the order is resulting into a civil consequence affecting the right or the status of employee in any manner. Rather, it is a case of simple transfer for which the employer is empowered to pass an order in his discretion when such an exigency arises. It has been laid down in many cases that the transfer is an incidence of service and the transfer order can be interfered by a Court of law only when the same is vitiated by malafides or extraneous considerations or is effected in violation of any statutory rules or the Act.

There is no substance in the arguments advanced by the learned counsel for the petitioner. The petition has no merits and the same deserves to be dismissed. It is accordingly dismissed.

C.c. as per rules.

Sd/-
Sunil Kumar Sinha
Judge

/Rao/